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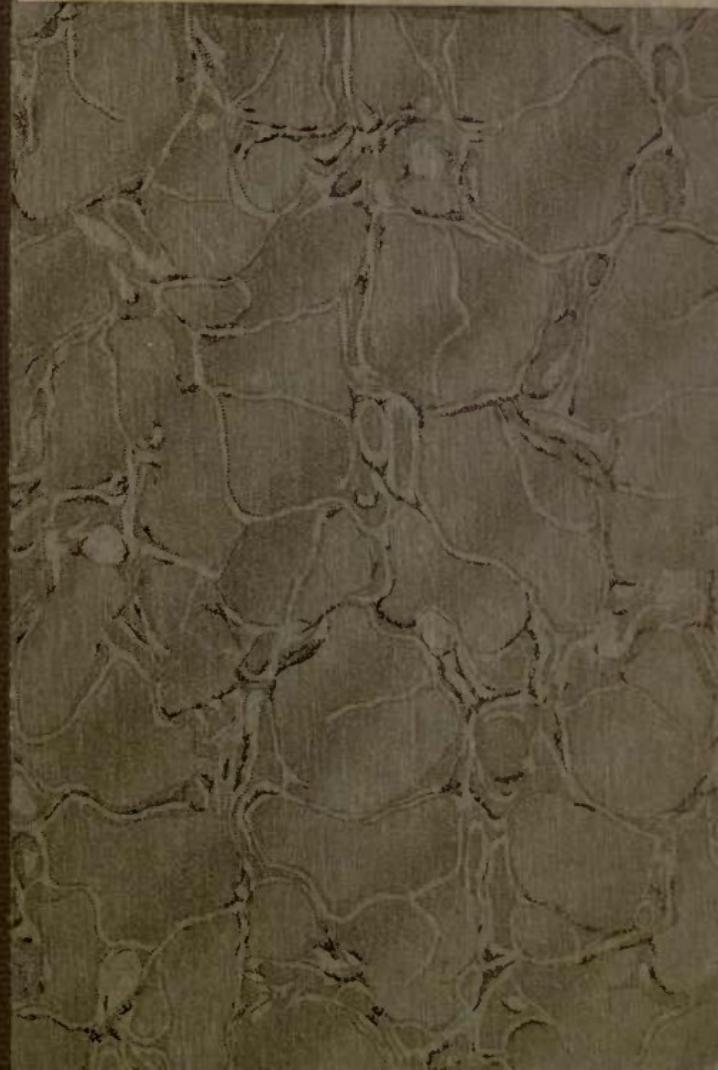
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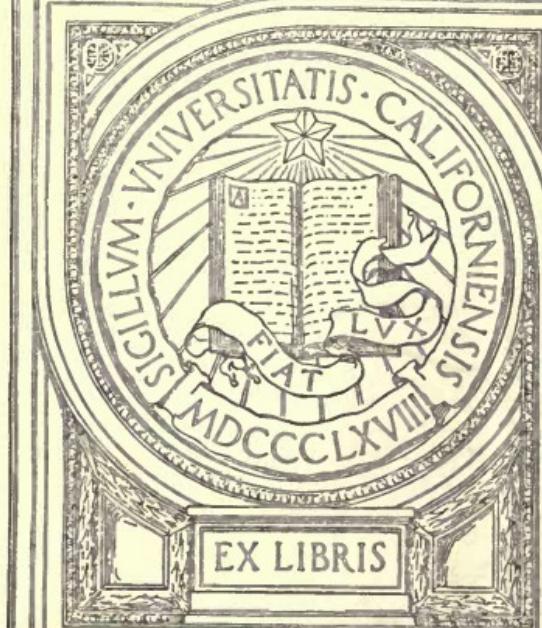
Thoughts on the Present
East India Bill...to Which is
Added, An Authentic Copy of
the Bill



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THOUGHTS

ON THE

PRESIDENT

EAST INDIA BILL:

PASSED INTO A LAW, AUGUST 1784.

TO WHICH IS ADDED,

AN AUTHENTIC COPY OF THE BILL.

LONDON:

PRINTED FOR JOHN STOCKDALE,

OPPOSITE

BURLINGTON-HOUSE, PICCADILLY.

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THOUGHTS, &c.

OF all the topics which have at different periods attracted the attention of a free and enlightened People, there is none which contains matter of more serious enquiry, than that which forms the subject of the following pages. A second plan has now been received in Parliament, for the future government of our possessions in India; and while the principles on which it is founded, and the measures which it adopts, are debated by our Representatives, it well becomes us to look with a careful and jealous eye, to the event of a discussion in which all our dearest interests are involved. And, indeed, great as this question must at any time have appeared, extensive in its objects, and formidable in its consequences, there are many circumstances which concur to render it inter-

resting to us, in the present moment, even much beyond its natural importance.

It is, in the first place, a consideration which deeply involves the credit of our Government, and the honour of our Nation. We are bound by every feeling of humanity, justice, and religion, to provide some remedy for the multiplied oppressions under which the natives of India have groaned. We are bound by our duty to ourselves, as well as to them, no longer to suffer the establishment of the British Nation in that climate, to remain the scourge and curse of its unfortunate inhabitants. That it has hitherto been so, there is too much reason to believe ; and allowing in the statements which have been made on that head to the Public, for the extravagance of a heated imagination, and the intemperance of party zeal, much still remains uncontroverted, a reproach to our feelings, and a disgrace to our national character. It is incumbent on us, therefore, to wipe away this stain ; and by whatever means we now find ourselves substituted in the place of the natural rulers of that country, we must be guided in our future conduct towards it, by that

that first duty of those who govern, the consulting the ease and happiness of their subjects.

Nor is our own political welfare less at stake. By a disgraceful and ruinous war, our burthens have been more increased, and our resources more diminished, in the short space of nine calamitous years, than in a whole preceding century of prosperity and triumph. Much, therefore, does it behove us to cherish what is still ours; to guard well the remnants of a great and flourishing empire; and to prove, by a just and prudent administration of our remaining territories, that we have not drunk, without benefit, of the bitter cup of adversity and humiliation.

To these circumstances, which mark the necessity and magnitude of the object, is to be added, the difficulty of the means by which it is to be attained. We are to weigh the distance of the country to be governed, the inveteracy of the abuses to be reformed, the power of delinquents, the hopes of impunity, and the temptations to guilt: Considerations now certainly

tainly pointed, and brought home to our feelings, by the extent and tendency of that plan, which was attempted on these grounds to be defended. But great indeed must have been their weight, and infinite their importance, if they could have reconciled this country to the admission of the smallest part of those principles, which were thus to have been established. Even as a Commercial People, we should, undoubtedly, have seen with horror, the annihilation of our first Trading Company; but as a Nation jealous of our Freedom, we looked from that measure to consequences of far greater importance. We saw that it was intended to destroy, at one blow, every legal security under which our property was enjoyed: That it was meant in the same moment to establish in the hands of a powerful Faction, an Executive Government, independent of the Crown: That to this Government was to be given the absolute and uncontrouled dominion of the East, including in it patronage, influence, and power, far beyond what is vested in our own Sovereign; and still further, that to these persons, thus exalted above the level, not of their fellow-subjects only, but of their King,

and

and of the Government of their Country, there was to be given a PERMANENCY of Power, unknown to any part of our Constitution, and absolutely incompatible with the very nature of a Free State. Seeing all this, we felt a necessity greater than any which was urged to us ; and we declared, with one voice, that it was desirable that former abuses should be corrected ; that it was to be wished, that India might be well governed ; *but that it was NECESSARY that the PEOPLE OF GREAT BRITAIN should continue FREE.*

In a happy hour for this kingdom, that plan miscarried, which, if it had succeeded, would have given an absolute power, under the cloak of reformation, to persons undistinguished in their country, except by a blind attachment to one daring and ambitious Leader. And we have now the satisfaction to see, that there are among us men of no mean abilities, of no trifling knowledge in public business, and above all, of no inconsiderable experience in this particular branch of it ; who, while they acknowledge the importance, extent, and difficulty of the evil, are confident of removing it, by an operation

operation less violent in its execution, and less alarming in its effects. A plan has now been proposed, and has received the marked approbation of Parliament, which professes to relieve public credit without *annihilating** the first Trading Company in the world; to secure to us the enjoyment of our territories without endangering our constitution; and to protect the natives of India, without enslaving the people of Great Britain.

And yet, much as we must all desire the accomplishment of these hopes, let us not be deceived

* In the debate on the Commitment of the present India bill, Mr. F-x was pleased to say, that he had never denied that *his* plan would have gone to the *total annihilation* of the East India Company. The Writer of these pages affirms, that Mr. F-x has repeatedly made that denial, as may be seen by a reference to any of the printed debates of the last Session. And it is, lest this admission should again be retracted, that it is thought proper *here* to record it. Among all the arts used to deceive the people into an approbation of measures which they abhor, there is none less justifiable than the constant misrepresentation of Parliamentary debates in almost every public paper, which is known to be the daily employment of more than one of Mr. F-x's most active friends.

ceived by them into an indiscriminate approbation of the measure on which they are founded. Let us weigh maturely the objections which are raised against it ; and having compared it not only with the former plan (which all condemn) but with the nature of the object proposed, and with the means by which that object can be obtained; let us try it on the grounds of reason, and on the principles of the Constitution. We may then form an impartial and decided judgment, to which we shall adhere, returning with contempt the daily insults of those who treat our opinions as the effects of popular delusion and temporary frenzy. Those very men know, and have reason to lament, that the people of Great Britain are not so weak as *they* were willing to believe. They have found in us judgement to discern, and firmness to resist, their plans for our oppression. They will ever find it so : And till they have persuaded us to surrender up our reason, they will in vain attempt to undermine our liberties ; nor will they DARE to seize them, till they have acquired the power to crush us.

It is therefore to my fellow-citizens, to an uninfluenced and discerning Public, to men capable of judging what is right, and desirous of following it, that I wish to submit my ideas on this subject; and I will proceed without further preface, to the consideration of the plan now proposed, which naturally divides itself into three distinct objects.

First, The establishing a Power of Control in this kingdom, by which the Executive Government in India is to be connected with that over the rest of the Empire.

Secondly, The regulating the Conduct of the Company's Servants in India, in order to remedy the evils which have prevailed there.

Thirdly, The providing for the punishment of those persons who shall, nevertheless, continue in the practice of crimes which have brought disgrace upon their country.

To each of these, various objections have been raised, which it is my intention to consider separately; and with them, the spirit and tendency

tendency of the regulations to which they apply.

I. The necessity of connecting, in some measure, the Executive Government of India with that of this country, has long been universally felt, was adopted in the former plan, is acknowledged by the opposers of this, and has in the form now proposed received the consent of the Company. But it is a very material point to consider, how this may be sufficiently accomplished, keeping at the same time in view the rights of the Company, and having an attentive and watchful eye to the Constitution of this country.

With respect to the rights of the Company, it is perhaps enough for us to consider, that they have themselves pointed out this mode as consistent with their ideas, and agreeable to their wishes. If any thing more were wanted on this head, the very nature of the objection which has been made to it in Parliament, sufficiently entitles it to our approbation. The supporters of the former Bill, (and in this instance

they certainly act consistently with their past conduct, however inconsistently with the laws of justice, and the principles of the Constitution) complain that too *LITTLE* is now to be wrested from the Company. That *too little* should be resumed by Parliament, of that which has been granted by Charter; that a Minister should take into his own hands *too little* power, *too little* influence, and *too little* patronage, is a complaint which might well weigh with those who supported government, only* in confidence that they would distribute corruptly what they had seized violently; and that they would share the plunder among those who had assisted in the robbery. But in the eyes of a virtuous and considerate people, it would, if it were necessary, overbalance many objections, and compensate for many faults.

It is, however, by no means sufficient to avoid trenching on the rights of the Company, unless the plan to be adopted holds out a reasonable hope of regulation in India, without creating

* I am far from including in this description all who voted for Mr. Fox's Bill: Many certainly did so conscientiously, being deceived into it by specious, though inconclusive arguments.

creating in any person whatever a degree of power formidable to the Constitution of these kingdoms. On both these heads objections have been raised ; and Mr. Fox has assured us, that the Power of Controul now to be created, is inadequate to any purpose of Reform, while an alarming accession of Influence is at the same time to be given by it to the Crown. Let us, therefore, recur to the Bill itself, in order to examine these assertions, and to decide whether they are justified by any solid ground of argument, or are the suggestions of a gloomy and disappointed mind, brooding over the loss both of popularity and power, and lamenting too late the consequence of an impatient thirst for absolute dominion, an intemperate and "*vaulting ambition,*" "*which o'erleapt itself—and fell on th' other side!*"

In the first place, therefore, with regard to the regulation of India, we shall find on examination, that this Bill, while it leaves to the Company the entire management of their commercial concerns ; while it continues in the Directors chosen by the Company, the conduct of their political affairs, provides, nevertheless, that they shall not be permitted to depart from those

those maxims of government there, on which all men are agreed. And if they should be inclined to forsake the principles of œconomy, peace, and justice, it prevents their endangering by such conduct, both the interests of the Company and the prosperity of the Empire at large. In these instances they will be controuled by persons connected with the Executive Government for the time being, appointed under his Majesty's Commission, and daily responsible to Parliament for every circumstance in the execution of their office. Thus it is, that by the establishment of that in which the genius of our Constitution delights, a species of mixed government, every advantage is held out, which can arise from mutual emulation for the public good, from local knowledge, from experience in the detail of business, from personal interest in the well-being of the Company, added to a permanent system of policy, to the exertion of political talents, and the responsibility of executive office.

Still, however, with all these circumstances, and with the addition of every method which prudence can suggest, to enforce from the servants

servants abroad a strict obdience to the orders which they receive from hence, this government has been stigmatized as weak and inefficient. And it is certainly true, that it possesses neither the unlimited PATRONAGE, nor the unconstitutional PERMANENCY, which Mr. Fox had provided for *his* Commissioners. To the seven persons of his nomination he had given (in the words of a spirited and unanswerable publication*) "the whole influence of " the offices of every kind, in India and at " home, belonging to the Company ; and the " whole influence arising from the transactions " of their trade, in the purchase of goods for " exportation, furnishing shipping, stores, and " recruits ; the influence arising from the " method of selling their goods, by bringing " forward or keeping back goods at the sales, " or giving indulgencies as to payments, so as " to accommodate those who were meant to " be favoured ; the influence arising from the " favour they might shew to those who were " then in England, and had left debts or ef-
" fects

* Mr. Pulteney's Pamphlet on Mr. Fox's East India Bill; printed for J. Stockdale, Piccadilly.

" facts in India, as to the mode of bringing
 " home and recovering their fortunes; the
 " influence of contracts of all kinds in India;
 " of promotions from step to step; of favour
 " in the inland trade; of intimidation with re-
 " spect to every person then there, who might
 " come home with a fortune, both with regard
 " to recovering his debts, and the means of re-
 " mittance; and with regard to enquiries into
 " his conduct; the influence upon Foreign
 " Companies or Foreign States, who have
 " establishments in that country, who, in re-
 " turn, might have the means of acting upon
 " individuals in this country; the influence
 " upon the native Princes of India; some of
 " whom have already found the way of pro-
 " curing the Elections of Members of Parlia-
 " ment; and many other means of influence,
 " which it is impossible to foresee or to trace?"
 All this he had given, if his assertions are to
 be believed, not to strengthen any Faction, or
 establish any Aristocracy in this country; but
 with the sole view of providing a strong Go-
 vernment in India.

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Those who have framed the present plan appear to have reasoned differently. They seem not to have imagined, that Subordination, the first principle of strong Government, can be promoted by teaching inferior servants to look from their superiors to an interest at home, both for advancement and protection; or, that we can expect among them any emulation for the public service, if we vest here the power of reward, in persons who can have neither leisure nor opportunity to know their merit, or to enquire into their pretensions. Perhaps, also, they carried their reasoning further, and concluded that the Princes of India would not the more respect our Governors for being neglected by those whom they were sent to command: While the superior servants themselves would not with much chearfulness intrust to persons, having no dependence on them, and in whom they reposed no confidence, measures of much delicacy in their execution, and involving in their consequences the dearest interests of the Company and the Public.

But it is also true, that this Board is not permanent. That, if the Administration of this country be changed, they must also share its fate, and make way for persons connected with those to whose care his Majesty shall intrust the rest of his dominions. If it were not so, What would be our situation ? The general interests of the Empire would be directed by men of one description, while India would be under the command of others in opposition to the King's Government, perhaps on points intimately connected with Indian politics. Is it sufficient to say, that in this case the latter would be *removed* by an address of Parliament ? If so, Where is this boasted permanency ? If whenever a difference of opinion arose, the Indian Board was to be removed, that it might not continue at variance with the Cabinet, then is this system abandoned as impracticable, in the only moment in which it could be useful : And the whole plainly appears to have been what we have unanimously declared it, a plan not for a permanency of measures, but a permanency of MEN ; a permanency of patronage, influence, and

and power, to an Aristocracy already formidable to the liberties of their country.

The last objection which is made to this part of the Bill, can scarcely be thought to merit a serious consideration. Mr. Fox having made a general charge against the present Administration, of desiring to increase the Influence of the Crown, thought it necessary, in considering this capital feature of their Government, to assert that it bore that complexion. But he *asserted* it only : He did attempt, for he knew that he was not able, to prove it : The undeniable fact being, that the Bill gives to the Crown *no influence whatever*, civil or military, at home or abroad ; vesting only in the King, as the legitimate Executive Power of this Empire, the appointment of persons to controul the Executive Government of India, *without salaries, and without patronage.*

Thus then, on a view of the provisions held out by this plan, for constituting at home a Superintending Government for the dominions of this country in the East, it appears, that

the end proposed to us, will be accomplished without the mischiefs which were thought to accompany it. With the full consent of the Company, and consequently without any violation of property or charters, we shall establish a power sufficient effectually to reform the abuses, and controul the Government of India, without having given either to individuals, or to the Crown, any authority dangerous to our own liberties.

II. Nor is this Board left at large, like the despotic Commission of Mr. Fox, to exercise their superintending power, as caprice or inexperience may dictate. Regulations are provided, and a system of policy marked out for them, under which alone our dominions in India can be made productive of advantage or honour to this country. And these relate to the second head under which I proposed to consider this Bill; as establishing rules for the conduct of the Company's servants in India, in order to remedy the evils that have prevailed in that quarter.

Of these evils, the first and most striking seems to be, the unsettled state of the Government, exhibiting a struggle of clashing powers, with little order or subordination. It has been our mistaken policy, to controul the power of the several Governors, by the addition of four Assistant Counsellors, any three of whom combined, may thwart the measures which the Governor brings forward, so as entirely to supersede his authority. To the disunion and distraction of Boards thus constituted, we may refer the bulk of those misfortunes which we are now lamenting, and against which we wish to provide in future: Not entering into the questions in issue between the several Parties, but justly concluding, that the permanent adoption of almost any system would have been attended with less evil, than a scene of contention, which degraded the dignity, and of fluctuation, which destroyed the energy, of the British Government. Wisely, therefore, have the Framers of this Bill begun with restoring order at the helm; for which purpose they have reduced the number of Counsellors to three, and given the casting vote, in cases of equality, to the Governor: Thus securing to him

him an efficient support to his Administration, except in those cases only where his conduct shall be disapproved by all those who are joined in commission with him.

And here let us carefully guard against the common error of considering this, and other measures, with a view to the characters of particular individuals. Such considerations are ill adapted to the decision of great and important questions of policy; because, with them we are too apt to mix our personal affections, passions, and resentments.—If the Bill proposed by Mr. Fox did establish in this country a new Government, superior to our Laws, and dangerous to our Constitution, it was a poor argument, to rest its defence on the *characters* of the *individuals* in whom that Government was to be created. Had those characters been such as they were represented; had they been all, *as they certainly were not*, men of acknowledged and tried abilities, with minds unbiassed by party, and untainted by dissipation and extravagance, that would have been a small consolation to us for the surrender of our liberties. In the same manner, in considering the power

to be given by the present plan to the Governor General of Bengal *for the time being*, let us be biassed neither by the panegyrists of Mr. Hastings to approve, nor by his calumniators to condemn it. Its propriety is grounded on general principles of government. If he has abused his former power, let him be recalled from his situation; if he has used it to the advantage of the Company, and the Country, let him be continued in it; but at all events, let that person, whoever he may be, to whom we entrust the government, be invested with weight, power, and efficiency to support it.

Another evil under which we have laboured, is the want of a Systematic Government, uniting all the British Dependencies in India in the pursuit of the same objects, and in the observance of the same plans of policy. We have seen our Empire there distracted by the different views of distinct Governments, negotiating in opposition to each other; and by their divisions, weakening the power, and disgracing the character of the British Nation. This is removed by the establishment of a *supreme power* on that Continent, to which all the other Go-

vernments

vernments are made subordinate. By this Bill there is given to the Governor and Council of Bengal a Controul over the other Presidencies, in all points which relate to any transactions with the Country Powers, to peace or war, or to the application of their forces or revenues. It is by this system alone that we can insure, in the exercise of Executive Power, either strength and efficacy abroad, or obedience and responsibility at home. It conduces to the increase of our authority, and the preservation of our public faith in India, to teach the natives to have recourse, in their transactions with us, to one center of Government; whilst it is essential to the efficacy of a controul in England, that there should be *one* body to receive orders, and to answer to this country for their execution.

For it must not be forgotten, that while we establish the dependency of the inferior Presidencies upon the Council of Bengal abroad, they are equally subjected to the direction of the Company at home. To them there is left no power of declaring war, of commencing hostilities, or forming treaties at pleasure. In all cases, except those of immediate danger, and

and absolute necessity, they are restrained from acting without orders received from hence. This seems to be the most effectual method of securing to us that pacific system which the Bill holds out, as consonant to the wish, the honour, and the policy of the British Nation.

The next object that comes under the provisions of this Bill, is the redress of the grievances of the Natives of India : An object of which all men must wish the accomplishment, except those who have already profited by our past negligence, or those who looked from it to future advantages. But in the attainment of this we must proceed cautiously and temperately ; not with prejudice or passion, not with the blind zeal of indiscriminate reformers, who either believe themselves, or wish to be believed, virtuous and humane, in proportion as they are inconsiderate and violent ; but with the equity of impartial judges, and the prudence of wise legislators. To provide for the payment of the debts of the Nabob of Arcot, which are a burthen on his country, discriminating at the same time those which have been justly incurred, from those which have been

forced upon him by the injustice and extortion of English oppressors : To ascertain the indeterminate rights and pretensions on which so many differences have arisen between him and the Rajah of Tanjore, foisted by Europeans, for the support of their own interested views : And lastly, to deliver the Zemindars, and other native landholders of India, from oppression ; and to secure to them their possessions, by permanent rules of moderation and justice : These are points upon which all men are agreed ; and upon which this Bill enacts such regulations as are well calculated to insure their attainment, without giving authenticity to unexamined claims, or attempting in Parliament to settle at once the detail of rights, which differ so materially, and in so many essential circumstances.

But it was necessary to guard not only against injustice, but also against profusion and extravagance, in the administration of the affairs of a distant government under a Commercial Company. A material part, therefore, of this Bill, is directed against the abuses said to have prevailed in the civil and military departments,

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enjoining a thorough revisal of their establishments; together with a suppression of such places as are found to be useless, and of such expences as may be conveniently avoided. And in order to prevent any delusive shew of retrenchment in the present moment, or any deviation from the wise system of œconomy at a future period, this Reform is directed to be constantly submitted in its whole state and progress, to the eye of Parliament.

Cadets and Writers have hitherto been sent to India in such unlimited numbers, as to remain a burthen upon the establishments of the Company; and their appointment was a principal means of influence in this country, exercised either by the Directors, or through them by former Ministers. No more of these are now to be sent out, till their number is reduced within the proper complement, which is not to be exceeded in future.

The recommendations also of the Directors (frequently made at the desire of Ministers) under which those servants of the Company who had an interest in this country, rose rapidly

and by partiality, to the prejudice of industrious and meritorious men, are now rendered ineffectual; and a system is established, of succession by seniority: Leaving, however, to the Councils abroad, that power which is indispensable to all Executive Government, of bringing forward (not by caprice, but by reasons by them to be assigned) any persons of extraordinary merit or capacity, to those situations in which they may effectually serve their country. Out of this regulation necessarily flows a limitation of the age of persons entering upon the line of East India service. For, if no provision was made to prevent children in their cradle being enrolled on the Establishment, they might be brought by succession to many important employments, before they arrived at manhood: Or, on the other hand, persons advanced in years might (as has lately been seen in several instances) be appointed to the stations of young men, for the sole purpose of repairing dissipated fortunes; and that without the prospect of being able to do it in the course of years, by regular advancement and legal profit. On the same ground, and on that of preventing, as far as possible, the mischief of tainting the

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Government of that Continent, by introducing into it the Parties of Great Britain, all persons who have resided five years in Europe since their return from India, are precluded from any future re-appointment to offices in that country ; with the exception, however, which justice requires for a certain time, to such persons as are now here, or have left India without the knowledge of this provision.

The last body of regulations for the Company's servants in India, apply to Offences committed in that Country. Regulations of the kind here brought forward, have been so long called for, and so indispensable to the very existence of that Government, that it would be difficult to imagine an objection against them. Security has been derived to Indian Delinquents, from the circumstance of their offences being committed within the territories of Indian Princes, so as not to come within the cognizance of the British Government. This Act provides against further evasions of this mischievous nature, by declaring the offence equally punishable, in whatever territory of India it is committed. Under the spe-

rious name of Presents, the grossest extortion has frequently been cloaked ; and all attempts to draw a line having proved nugatory, nothing remained but to put an entire stop to the practice. The Act, therefore, of receiving Presents, is declared to be in itself Extortion, and punishable by law accordingly. Of the same kind with these are the regulations against Disobedience of Orders ; for gross instances of which we need not go very far back into their History ; And also against the bargaining for Offices ; a mischievous practice in all countries, but most so in that, where the means of plunder are great ; and consequently, the more dishonest the men, the higher the prices which they can afford to offer, from the prospect of reimbursing themselves by proportionate peculation. Both of these offences are accordingly pronounced Misdemeanors at Law : And provision is made, that the guilty persons shall not compound for them with the Company, nor ever be restored to appointments in their service.—Two restrictions more remain, to complete this general head of Regulations in India : One of them binds Collectors and Receivers by oath, from accepting any private gratuity,

gratuity, over and above the legal tribute; and the other guards against Illicit Correspondence with the Enemies of the Company, and of Great Britain: Points of general policy and utility, which I have thought proper to mention in their place; but upon which men are too universally agreed, to require any comment or discussion.

We have seen, then, in what spirit these regulations are dictated; we have judged how wisely they are calculated to meet the evils, and to reform the abuses, which have existed. May they be prosperous in their effects! May the intentions of a patriot Minister, may the wishes of a virtuous People, in the cause of humanity and justice, be crowned with that success which they both so amply merit! We may then see the Government of India, which has hitherto been a medley of discordant powers, where nothing was supreme, nothing subordinate, exhibiting the picture of an orderly and systematic Empire, where every part has its proper function, and contributes to the general benefit and harmony of the whole. We may see that spot, which has been

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for so many years a theatre where avarice and ambition have contended in rapine and violence; henceforward the seat of liberty, humanity, and justice. The rights of Nature may then be established on the ruins of Oppression; and the British Government, long the bane of that Continent, may at length become, what we are bound to make it, a Blessing to India.

III. We come now to consider the remaining part of the Bill, relating to the *Trial of Offences* which have been committed in India. And here, in the first place, we have that which forms indeed the ground-work of the whole plan, the universal consent of all parties, as to the necessity of the object. For we are told from every side, that the temptations to guilt in India are such as can never be counteracted, but by the utmost vigour of efficient laws, to be executed not only in that country, but here also, at a distance from local prejudice, from personal partiality, from the hopes of favour, and from the dread of power. How much

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our system of Indian Government is in that respect deficient, may be learned from the encouragement which is now held out to delinquents, by recent and striking examples of impunity. We have all seen, that persons accused of the most flagrant crimes that can even in that country be committed, have defeated every attempt to bring them to punishment; and have baffled not only the authority of the King's Bench, our highest court of criminal justice, but even the majesty and terrors of Parliament itself. And, undoubtedly, it was not to any remissness in their prosecutors, but to the genius of our courts of law, and to the very frame and constitution of a deliberative assembly, that the persons here alluded to, were indebted on those occasions. What then remained, but the erection of some new Tribunal, to which might be given a power over those offences, which, in the ordinary courses of common law, and parliamentary proceeding, have defied the arm of justice.

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This was stated by Mr. Fox, when he opened his Bill to the late House of Commons, as a point of indispensable necessity, without which

no plan for governing India could be efficacious. He postponed it, however, till the passing of his Bill; that is, till by *annihilating the Company*, he should have acquired a power which would have left the Parliament little room for deliberation on this or any other subject. The present Minister has acted differently : He has presented to us, at one view, his whole system; and has suffered nothing to deter him from proposing to Parliament all which he judged necessary for his object, and consistent, at the same time, with the rights of the Company and with the British Constitution. In this, as in the other difficult but necessary measures of this Session, he has proceeded with openness and candour; shewing that he has no reserves with his country; to whom he is so largely indebted.

Let us therefore now consider the principles on which a plan of Judicature for India should be regulated, as applicable to the end proposed; and let us examine how far what is now brought forward, is consonant to those principles, and calculated to produce that end. Above all other considerations, in the trial of

British

British Subjects, it is necessary to observe the closest adherence to the SPIRIT of the British Law : Not from any national or local prejudice, but because that spirit is the spirit of equity, applying equally to every age and every climate, and depending on the immutable principles of universal justice. And the very same reason should induce us, on the other hand, to reject all those *forms*, which are purely of a local nature ; which being adopted by our ancestors, in conformity to our own institutions, and with a view to the administration of one kingdom, are repugnant to the manners of a distant people, and are inapplicable to the government of a widely extended empire.

We all know, and the experience of every neighbouring country will convince us, that it is not by forms alone, but by the spirit of mild laws, and by the genius of a free government, that Liberty subsists. In almost every monarchy of Europe, the forms of those deliberative assemblies are still preserved, under which their ancestors enjoyed the blessings of Liberty. But it is in the Parliament of Eng-

land alone that their spirit is maintained, of force and energy to protect us equally against the encroachments of arbitrary Monarchy, and against the desperate attacks of turbulent and daring Factions.

In the formation, therefore, of this Tribunal, it was the duty of the Minister to look to that which we so justly esteem and venerate, the right of *Trial by Jury*. He was to consider what were the real principles which have rendered this institution the palladium of our Liberties; and distinguishing these from the minute forms, which cannot be applied to Indian Causes, both from the length, and the nature of the discussions they involve, preserve in his new composition, the essence and spirit of that to which we owe the freedom of our Constitution.

And here we need not rest on argument only. The principles of our Constitution, particularly with relation to this subject, have been laid down by men of acknowledged character and ability, lawyers, statesmen, and philosophers.

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The names of Hale,* Blackstone,† and De Lolme,‡ carry with them an authority far superior to any which can be derived from the reasonings of these pages. To these I will refer my Reader, and he will certainly think it a matter of no small weight, when he finds such men agreed on this subject, and pointing out unanimously the following principles as the chief source of those benefits which they all so much commend :—*First*, that the Judicial Power should be placed in hands entirely distinct from those in which the Executive Government is lodged :—*Secondly*, that it should be exercised by a fluctuating, and not by a permanent body :—And lastly, that such body should be free from all suspicion of partiality, both by the description of men out of whom it is selected, and by the manner in which that selection is made.

Let us now examine what are the regulations provided by this Bill, in the establishment of a new Tribunal, with a view to consider how far
they

* Vide Hist. C. L.c. 12.

† Vide Commentaries, B. III. c. 23.

‡ Vide B. I. c. 9 and 10.

they are consonant to the principles here laid down. And to begin with the means by which a person may be brought to trial : Informations might, before this Act, have been filed for the crimes to which they relate, either by the King's Attorney General, in virtue of his office, or by any other person, with permission from the Court of King's Bench. This right remains precisely the same, with this addition only, that the Attorney of the Company (who stand, with respect to offences committed in India, in the situation of the Government) has also the same official power, which is given in other cases only to the Attorney General of the Crown.

The material points, therefore, to be considered, are the constitution of the Tribunal before whom these informations are to be tried, and the mode of proceeding in the decision of such causes. And if we find these so ordered as to secure to us the benefits above-mentioned, we shall conclude that this mode of trial is no real infringement of that which we esteem our birth-right, the Trial by Jury.—That the first of these benefits will be preserved in this Court,

" of being wholly *distinct* from the executive " power" is evident, since no one of the persons of whom the Court will consist, is to be appointed by the Crown, or even admitted to it, while he exercises any office under the Government of the Country.—The Court will also have the second advantage, " in being of a *fluctuating* nature ;" for it will not be one and the same body, constituted for the trial of all such causes, but a Tribunal selected for the particular occasion.—And as to the third advantage, " of *impartiality*," that is amply secured, as well by the description of men from whom this selection is to be made, as by the manner of making it; points which require to be considered more particularly.

The pannel or body from whom the Court is to be selected, consists of a certain number of the Members of both Houses of Parliament, not chosen indiscriminately, nor yet by the nomination of the Majority of either House, who might be supposed to be attached to the Minister of the day ; but by a mode, by which due weight is given to all parties and descriptions of men. Every Member is to deliver in

a list

a list of forty persons, whom he most approves; and those whose names appear on twenty lists, provided they hold no place under Government, and are not particularly connected with the Company, are to compose a List, to be transmitted to the Clerk of the Crown, as proper persons to serve on this Tribunal.

Here then we have in effect *a pannel of jurymen*, answering to the character of Jurymen in every essential particular; first, as being distinct from the magistracy; next, as being a fluctuating body; and lastly, chosen in such a manner as to obviate all partiality. The similarity continues in the remaining part of the process. The person accused has the same power as in our criminal law, of making peremptory challenges, and that to the number of thirteen of the Peers, and twenty of the Commons; while the prosecutor may make challenges upon special cause shewn to the Court. From the number then remaining, four Peers and six Commoners are drawn by lot: To these are joined three of the twelve Judges, to be named by their colleagues, one from each of the Courts. And of these thirteen thus selected,

consists

consists the Tribunal, competent to take cognizance of offences committed in India.

Thus it is, that in the constitution of this Court we trace every principle which has been judged essentially characteristic of a Jury. If the minute forms have not been equally preserved, it is because they have been found neither applicable to the subject, nor compatible with the nature of the causes in question; and would, if adopted here, fail of all the advantages to which they were directed in the original institution.

It is true that the Jurors here are chosen from a very different class of men. Yet when we consider what are the objects pointed at in the choice of Juries, namely, that they shall be men of sufficient substance to secure responsibility, and enabled by their local knowledge, and habits of life, to judge of the fact, we shall perceive that the objects aimed at would be entirely lost, by submitting the decision upon East Indian offences to those men of whom Juries ordinarily consist. Even in the common practice of the British Courts, we see that cases arise of

too delicate or complicated a nature to be trusted to a common Jury ; on which occasions it is usual for a *special* Jury to be summoned. The instances of Indian Trials may well be thought to require something still *more special*, something composed of persons of a more enlarged sphere of life, and accustomed to turn their thoughts to points of national concern. In the room therefore of the common, or special Jurymen, are substituted persons, of minds enlarged by education, improved by habit, and versed in the detail of political concerns : Selected by the choice of all parties in Parliament from that body, to whom the legislation of the Empire at large has been committed by their fellow citizens. When we add to the impartiality with which this Pannel is selected, the similarity that takes place in the mode of striking them off, we shall see the advantages of our favourite mode of Trial preserved so minutely in the constitution of this Tribunal, that we shall have every reason to confide in the justice of its proceedings. Before such a Tribunal as this, the guilty may indeed tremble, but the innocent may approach without fear or apprehension.

In the manner of their proceeding, greater alterations have been adopted. For neither is this Tribunal denied the power of adjourning, nor is it restricted to unanimity in its verdict; it unites also the double capacity of Judge and Jury, by deciding not only upon the Fact, but the Law, and proceeding even to the last particular of pronouncing sentence.

As to the power of adjournment, it is easy to comprehend why it could not be allowed in the constitution of a common Jury, since it would expose them in the interval to all the arts of seduction which might lie in wait for them abroad, and which persons of the ordinary rank might not always be able to resist. These cannot be supposed to operate upon the persons selected for this Tribunal, guarded as they are against all means of corruption or influence, by their rank, their station in life, and above all, by that dignity and responsibility of character which is annexed to the situation of public men. When we add to this, the absolute impossibility of carrying through in one day the detail of trials which do not turn, like

common cases, upon the ascertainment of a simple fact, but comprise various and complicated discussions, involving in them the choice of evils, and points of state necessity, we must confess, that a power of adjournment is necessary, for the first purposes of justice; the hearing attentively, and at full length, the several allegations of the contending parties.

We are next to consider, how far it was expedient to dispense with the unanimity of their verdict. This feature is a striking peculiarity in the present constitution of the English Courts of Justice: Whether it existed in their original formation is uncertain: Indeed there is great reason to think that it has crept in at a subsequent period. It obtains in no other country, not even in Scotland, where Juries are cœval with their Government. In our highest Court of Justice, that of the Peers, it never has existed; nor has it been adopted in any tribunal which the wisdom of the Legislature has found occasion to establish; not even in that most nearly interesting to the Legislature, which decides upon the legality of elections

tions to a seat in Parliament. The objections to it are so forcible and so obvious, from the possibility, and indeed frequency, of those differences of opinion between honest men, which seldom yield to mutual argument, that the most celebrated writers on this subject have questioned its policy. Yet how infinitely are these objections increased by the nature of the causes to be heard before this Court. Perhaps in the ordinary course of civil causes, where the fact is simple, and open to the comprehension of every plain understanding, there may be little reason for apprehending such difference of opinion. But in causes relative to India, at once complicated in their nature, and including in them considerations of political and commercial interest, such differences of opinion must not only often happen, but may originate on both sides, in principles of strict duty, and in the dictates of a scrupulous conscience.

The last deviations from the forms of a Jury, is that which constitutes them Judges of the Law, as well as the Fact: And against this, particular clamour seems to have been raised,

raised, though perhaps with far the least shew of reason. For, *on the one hand*, it is a power which our Constitution allows and recognizes in innumerable instances, not only in Courts Martial, but in all proceedings before Justices of the Peace; before Courts of Quarter Sessions; in our Courts of Law, upon attachments; and lastly, in the proceedings of Parliament, as well in cases of impeachment, as in that established mode of trial, which every Peer claims as his dearest birth-right—the privilege of being tried, in cases affecting his life or his honour, by the whole body of the Peerage sitting in judgement upon him, and deciding, as in the instance of this 'Tribunal, both the Fact and the Law, as well as pronouncing sentence. And, *on the other hand*, it may be questioned, whether it is really any deviation; and whether Juries are not competent to judge of the Law as well as the Fact. For certainly, whenever Juries take upon themselves, as in the case of *Almon*, and more recently in that of *Dean Shipley*, to pronounce the fact true, but the intention not illegal, they do in reality exercise that very power which is now to be vested in this Tribunal.

But

But supposing it to be that innovation which it has been vainly contended to be, still in the present instance it would be unavoidable. For, since in all cases before this Court, the quantum of punishment must depend upon the circumstances which induce them to find the delinquent guilty, there would be a manifest defect, if those who had considered the one were not also to determine the other. And supposing this power to be left to the three Judges, it might then happen that a sentence might be passed, measured only by their separate opinion, and very disproportionate to the sense which the rest of the Court might have of his guilt : And it would be in vain for the majority to condemn, if three of the number could destroy the effect of their verdict, by their lenity in measuring the punishment.

In surveying this Tribunal, we have found it assimilated in every essential circumstance, to the spirit and practice of the English Law and carrying with it every benefit which results from that peculiar mode of trial, which Englishmen so justly regard with pride, and watch with jealousy; differing from it in those minute

minute *forms* alone, which have little weight or significance, beyond what custom and antiquity has given them. And this is a measure which afforded the fairest plea to the Minister, of widening the basis of his power, completed in a manner which entirely excludes the interference of the Crown, and closes up all the avenues of Ministerial Influence.

Much has been said upon the subject of the evidence which is to be received before this Court; as if this part of the Bill was not only an infringement of the practice of the English Law, but a direct violation of the eternal principles of Justice itself. But these objections, like the others which have been raised against this Bill, are conceived in ignorance, or suggested in malice. It is said, that by the provisions for transmitting to the Court of King's Bench examinations taken in India, before English Judges, under all the forms and regulations of English Law, and for permitting the authentic records of the Company to be produced before the new Tribunal, an *unknown species of evidence* is to be introduced into this Country. If they were in truth an innovation, it

it would be easy to prove that it is of indispensable necessity to every idea of a trial of Indian Delinquencies. And here too we might plead the confession of Mr. Fox, who in the debate on this very Bill, assented to these clauses, even before they were modified to that state in which we now see them. But our argument will rest on more solid grounds than any assertion of that gentleman, or than any reasoning of mere necessity. Whoever will have recourse to our Statute Books in one instance, and to the Reports of the Court of King's Bench in the other, will find that a Law was already in existence for taking depositions in India, under a Commission from the King's Bench ; and that the Records of the Company were actually read in evidence, under the authority of Lord Mansfield, in the Trial of Mr. Stratton. What then shall we say of those Legislators, Members also of the highest Court of Justice in this kingdom, who, in their zeal against the passing of this Act, have reproached as innovations,* things established by law, and sanctioned by practice ; and *have recorded to posterity, their total ignorance of the laws*

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* Vide Lords' Protest, August 9, 1784.

laws under which they are themselves protected, and by which they are to judge of the properties and lives of others. But to some of them, protests on this subject are ominous. A few incoherent words, half-uttered in broken sentences, may be tortured into meaning, and misrepresented into sense. But these written opinions remain, and rise in judgement against them, to prove, that while they affect to monopolize the abilities and virtue of this country, they possess neither the knowledge to judge with wisdom, nor the integrity to act with consistency.

Connected with the subject of Evidence, is the regulation which compels all Servants of the Company, within two months after their return from India, to deliver into the Court of Exchequer, inventories of their property of every kind, which they may then be possessed of. The severity of this is objected to; and yet it would be difficult to find any other test of the conduct of their several officers, or any other check to the force of those temptations, from which so much evil has already proceeded, and so much more is still to be apprehended. What motives can we suppose so strong, as the shame of

of returning after a short absence with a large property, or the pride of bringing home a very moderate fortune after a long residence in that Country, to stifle that spirit of avarice and rapacity, which has so long prevailed; and to secure the natives from that rapine and oppression, under which they have so long unfortunately laboured.

For a series of years, we have been accustomed to see every public measure, as it passed, converted to the purposes of Ministerial Influence. Not a tax was levied, but it was employed by the *unprincipled Minister of the day*, as a means of strengthening his power: And perhaps he was less scrupulous what new burthens he laid upon the people, when he found it the most successful method of invading their liberties. And within this last year, we have been witnesses to the eagerness with which another Ministerial Leader seized this very measure, relative to the regulation of the East Indies, as an instrument for giving a death-blow to the Constitution; treating the supposition of effecting any reform otherwise, as absurd and impracticable. What then must be our feelings of surprize

surprise and admiration, when we find in the present Bill, this great work effected, without the minutest accession of Patronage to Government: When we see a Court of Judicature erected, inaccessible to influence either from the Crown or the Company; and behold a vast Continent subjected to the controul of this kingdom, without producing the smallest ill effect upon the British Constitution? When we contemplate such a Bill, may we not justly consider it as an *emblem* of the PURITY and INTEGRITY of the mind from whence it has proceeded; and may we not draw conclusion highly favourable to the intentions, and calculated to inspire confidence in the conduct of the present MINISTER of this Country.

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